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CH/Lor

IN THE HIGH COURT OF CHHATTISARH AT BILASPUR

WRIT PETITION NO. 3935/2003

PETITIONER Sukhlal, S/o. Bhagela, Qr.No. 13, Tata Lines, Camp-2, Bhilai, Distt. Durg (C.G.)

VERSUS

RESPONDENT Bhilai Steel Plant, Through Managing Director, Sail, Bhilai Steel Plant, Bhilai, Distt. Durg (C.G.)

P. R No. 3935/03
Presented by Shri H. D. Diwan
dated 20/11/03

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI ETC OR ANY OTHER DIRECTIONS OR ORDER TO DO JUSTICE IN THE MATTER.

To

APR

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Writ Petition No.3935/2003

Sukhlal

Vs.

Bhilai Steel Plant

ORDER

Post for 31.01.2005

Sd/-
Sunil Kumar Sinha
Judge

(75)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Writ Petition No.3935/2003

Sukhlal

Vs.

Bhilai Steel Plant

Shri S. Poptani, counsel for the petitioner.
Ku. Pritha Ghoshal, counsel for the respondent.

O R D E R
(21.01.2005)

Sunil Kumar Sinha, J,

By this writ petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the legality, validity and propriety of the impugned order dated 09.2.2003 passed by the Industrial Court, Raipur, in Civil Appeal No.104/MPIR Act/A/II/2003 by which an appeal against the order passed by the labour Court in Case No.12/MPIR Act/98 on 28.2.2003 has been dismissed and the order has been confirmed.

(2) The facts of the case are that the petitioner filed an application before the Labour Court u/s 31(3) of the M.P. Industrial Relations Act 1960 for the relief of the correction of date of birth in his service record. He prayed that the date of birth recorded as 09.1.1945 in

the service record be changed as 17.6.1950. The case of the petitioner is that he entered in the services of respondent's Steel Plant in the year 1972. When the service records were prepared in the year 1978, by mistake, his date of birth was recorded as 09.01.1945 whereas his correct date of birth is 17.6.1950. When the petitioner came to know about this wrong entry in the service record, he submitted an application before the concerned authority on 02.7.1984 and prayed for correction of his date of birth as 17.6.1950. He also made several oral requests but no action was taken in this regard. Ultimately, on 09.01.1998 he again gave an application but the date of birth was not corrected. When all the efforts of the petitioner went in vain, the petitioner filed the instant application before the labour Court.

(3) The respondent caused its appearance and filed written statement denying the contentions of the petitioner. It was pleaded by the respondent that actual date of birth of the petitioner is 09.01.1945. It was specifically pleaded that the petitioner declared his date of birth as 09.01.1945. On his appointment in the Plant, he submitted his attestation form on 06.06.1978 in which he declared his age as 33 years. By computation,

his year of birth was recorded as 1945. It was further contended that on 09.1.1978 the petitioner was medically examined by the Senior Industrial Medical Officer before whom he declared his age as 33 years. His date of birth was computed as 09.1.1945 on the basis of the medical certificate. The petitioner was again examined by the Senior Industrial Medical Officer on 13.8.1983 before whom also he declared his age as 38 years. It was also contended that the petitioner had made an application on 02.05.1994 for issuance of service certificate to obtain the driving licence. He was issued the said certificate on 03.5.1994 in which his date of birth was shown as 09.1.1945. The petitioner did not raise any objection regarding his said date of birth. In fact, the respondent denied the aforesaid claim of the petitioner and contested the matter on the point that the actual date of birth, as declared by the petitioner and assessed by the medical examination board, from time to time, was 09.1.1945 and the same cannot be changed, therefore, the petitioner is to retire on 31st January 2005 and the application should be dismissed.

(4) The labour court framed various issues in this case and after recording evidence of the parties dismissed the case of the petitioner holding that the petitioner could

not prove his actual date of birth to be 17.6.1950 and no corrections in the records are possible in the matter.

(5) Against the aforesaid order passed by the labour Court on 28.2.2003, the petitioner filed an appeal before the industrial Court. The said Court also dismissed the appeal of the petitioner and confirmed the order passed by the labour Court. It is against this order, the petitioner has filed this petition under Article 226/227 of the Constitution of India.

(6) Learned counsel for the petitioner submits that in fact, the actual date of birth of the petitioner is 17.6.1950 and the labour Court as well as the industrial Court erred in law in holding that the petitioner could not establish that his date of birth was 17.6.1950 and no correction was possible in the service records of the petitioner. Learned counsel also submits that in fact, the courts below recorded perverse findings in this regard and the impugned judgment deserves to be quashed by this Court. The courts below misappreciated the entry of Ex.P-2 (Birth Register) which was an irrefutable document regarding the fact in issue.

(7) Return has been filed on behalf of the respondent. The respondent has taken a preliminary objection regarding maintainability of the writ petition. It is submitted that the labour Court as well as the industrial Court, after considering the entire evidence on record and after giving due opportunity of hearing to the petitioner recorded a finding that in fact, the petitioner could not establish that his date of birth was 17.6.1950 and this Court under article 227 of the Constitution of India cannot re-appreciate or consider the evidence to substitute its own decision as an appellate authority and the petition is not maintainable. The respondent has also denied the claim of the petitioner on merits.

(8) I have gone through the records of the labour court and have also perused the judgment passed by the labour court as well as the industrial Court.

(9) The petitioner had examined many witnesses for proving his case before the labour court. He himself was examined as A.W.1. Another witness namely Nohar was examined as A.W.2. A village Kotwar namely Bodhram was examined as A.W.3 and one Pramod Kumar Dubey, who was working as Head-Copiest in the office of the Collector Bilaspur, was examined as A.W.4. The non-

applicant had also examined two witnesses namely Santosh Singh Bais and S.W. Govardhan who were the employees of the respondent-establishment. All the witnesses of the petitioner have tried to bring on record that the actual date of birth of the petitioner is 17.6.1950 as the petitioner was well known to them. The village persons have deposed according to their memories. Not only this, the petitioner has filed various documents, in which Ex.P-2 is the copy of page no.88 of Birth Register of village Peeparlod which shows an entry of date of birth on the name of the petitioner as 17.6.1950.

(10) The respondent has filed various documents which are in fact the service records in which the date of birth of the petitioner is mentioned as 09.1.1945. The attestation form under the thumb impression of the petitioner is filed as Ex.D-1. It has also filed a copy of Circular No. M&R – 52/82 dated 17th May 1982 (Ex.D-7) alongwith the rules regarding determination of the date of birth. Rule 4.4 and rule 4.10 are relevant. Rule 4.4 lays down the provisions for those persons who have not passed Matriculation/School Final examination/ equivalent examination at the time of entering the service. This rule is quoted as under:

> *"**4.4** In case of those who have not passed Matriculation/School Final Examination/equivalent*

examination at the time of entering the service, the following documents containing his date of birth may be accepted as evidence of age, in the order in which they are enumerated below (in other words evidence at (b) will be accepted only if evidence at (a) is not possible, and so on,

(a) School Certificate from educational institution where the candidate/employee studied.

(b) Service record/service certificate issued by previous employer in case of candidates/employees who had been in employment under public sector enterprises/Government departments or a local body prior to joining SAIL.

(c) Attested extracts from Register of Birth & Death maintained by Gram Panchayats, Municipality, Municipal Corporation, Town/notified area or an appropriate authority.

(d) Baptism Certificate from Church in case of Christian employees/horoscope in case of Hindu employees.

(e) Certificate of birth from Government hospitals where the candidate/employee was born."

Rule 4.10 deals in respect of the employees whose date of birth has already been recorded in the descriptive roll/ declaration form. This rule is also quoted as under:

"4.10 In respect of those employees whose date of birth has already been recorded in the descriptive roll/declaration form/service book of the employee and signed/thumb impressed by him, the date so recorded shall be deemed as final and binding."

In fact, these rules are the guidelines on the basis of which the date of birth of an employee is to be determined at the time of entering in the service of the respondent's establishment. These are not the rules for

determination of the date of birth of an employee when his date of birth is already entered into descriptive roll/ declaration form/ service book and is signed and thumb impressed by him (Please see rule 4.10).

(11) The labour court after appreciating the entire evidence on record (oral and documentary), referred to above, and after due analysis of the same came to conclusion that the petitioner could not establish that his actual date of birth was 17.06.1950 and the entry in the service record as 09.1.1945 is incorrect. After appreciating the entire evidence of the parties the labour court has dismissed the petition. When the appeal came before the industrial Court, the Industrial Court again examined the legality of the evidence including that of the entry in birth register Ex.P-2 and after analyzing the same, came to the conclusion that the finding recorded by the labour Court was just and proper and the same is not required to be interfered under the appellate jurisdiction.

(12) After the decision of the labour Court as well as the industrial Court, this petition is in fact under Article 227 of the Constitution of India where the jurisdiction of this Court is limited. The jurisdiction of the High Court

under Article 227 has been discussed by the apex Court in the matter of ***Estralla Rubber -Vs- Dass Estate (P) Ltd*** reported *in* ***(2001) 8 SCC Pg.97***. The apex Court has laid down the principle that while dealing with a matter under Article 227 of the Constitution of India, though the High Court is duty bound to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner, but the High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of jurisdiction of the subordinate courts or tribunals. Exercise of the power and interference with the orders of the Courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that in fact, the High Court while acting under this article cannot exercise its power as an appellate Court or substitute its own judgment in place of that of the subordinate Court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable

person can possibly come to such a conclusion which the court or tribunal has come to.

The apex Court further held in the matter of ***Sugarbai M. Siddiq and others –Vs- Ramesh S. Hankare (dead) by L.Rs.,*** reported in ***(2001) 8 SCC 477*** that in a petition under Article 227 of the Constitution, the High Court has to see whether the lower court or the tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision making process.

(13) Learned counsel for the petitioner, relying upon the decision reported in ***(2003) 6 SCC 483 (State of U.P. and others –Vs- Gulaichi (Smt.)*** argued that the petitioner was entitled to file an application for correction of date of birth if he was in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded. He relied upon para 9 of the decision which makes a reference to the case of ***Union of India – Vs- Harnam Singh (1993) 2 SCC 162***. He submits that the petitioner was well within the authority to file such an application and since he was in possession of irrefutable proof which he has furnished before the

labour Court, the labour court would have believed the same and passed an order in his favour.

(14) Here the dispute is not in relation to the question of right of filing an application before the competent authority or before the labour Court. The dispute falls in a narrow compass and the same is that, if the two courts below after due appreciation of the evidence furnished by the petitioner and the respondent including the copy of entry of birth register (Ex.P-2), on which heavy reliance is placed by the petitioner as an irrefutable evidence, came to the conclusion that the petitioner could not establish that a wrong entry has been made in service record and his date of birth is 17.6.1950, then it cannot be said that unless the finding in relation to the above fact is perverse or is held to be incorrect, the same can be interfered by this Court under Article 227 of the Constitution of India. The entry of birth register has been held to be false and concocted. The reasons assigned by the two courts below are cogent. The analysis is proper and no interference is possible at this stage.

(15) Counsel for the petitioner has also relied on a decision reported in ***M.P.Weekly Notes 1990 (1) Note 204 (D.K. Arya, I.P.S. –Vs- Union of India)*** which goes

to show that the High Court has issued a *mandamus* for correction of entry of date of birth in the service record of the petitioner because the statutory document in relation to the date of birth issued by the Municipal Board was not considered. It is a distinguishable case. Firstly, the genuineness of the document was not in question in the said case and secondly a representation of the employee was filed before the concerned authority and the said authority disposed of the representation without considering the said document in relation to date of birth annexed to the representation. Admittedly, there was no intervention of the Court or the tribunal or any statutory body empowered with the jurisdiction of adjudication on the point. The case in hand cannot be governed by this law. In this case, the labour Court has adjudicated the matter and has recorded a finding and thereafter an appeal in the industrial Court was also filed, therefore, the petitioner cannot take advantage of the aforesaid law laid down by the M.P.High Court and pray for issuance of mandamus in this regard.

(16) After going through the entire records of the case and after considering the facts and circumstances and material on record, this Court is of the opinion that there are no glaring circumstance in this case under which an

interference is required under Article 227 of the Constitution of India as the learned counsel for the petitioner could not point out any perversity or illegality in the judgment of the two courts below. The courts below have recorded a positive finding against the petitioner and the same cannot be interfered in this petition at this stage. The petition has no merit and the same is dismissed with no order as to the cost. The records of the Labour Court as well as the Industrial Court be sent back immediately.

Sd/-
Sunil Kumar Sinha
Judge

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Rao